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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MOSES MUSOKE MUYENGA,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 03-71982

Agency No. A75-697-989

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted October 20, 2005
Pasadena, California

Before: PREGERSON, CLIFTON, and BYBEE, Circuit Judges.

Moses Musoke Muyenga, a native of Uganda, applied for asylum and withholding of removal claiming past persecution for his political activities. He was active in the Uganda Young Democrats, the youth wing of an opposition party

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

in Uganda, and worked at an orphanage for children of AIDS victims. He claims that he was arrested, detained for four days, and beaten by government officers who accused him of supporting a militant rebel faction, the Allied Democratic Front (ADF), through his work at the orphanage. At the end of his detention, guards allegedly put him in a room with snakes and demanded he either give information about ADF or join the army. Muyenga opted for army service and, after two weeks of training, escaped when his convoy was ambushed. Muyenga claims that he met up with a friend and fellow Uganda Young Democrats member, Damiano Kigove, who also worked at an orphanage and had escaped from similar incarceration and conscription. The two men made their way to Kampala and then to the United States, and Kigove (who has been granted asylum) testified on Muyenga's behalf. In support of his application, Muyenga submitted a letter dated August 15, 2000, documenting his affiliation with the Uganda Young Democrats and noting his disappearance "almost a year back." He also submitted an article from the Ugandan *People Newspaper* dated August 25, 1999 (about two weeks after his abduction) reporting that Muyenga had gone missing and was "suspected to have been abducted."

The Department of Homeland Security submitted the newspaper article to a forensic lab where experts determined it had been forged. The Immigration Judge

agreed, noting that “[t]he problem is visible to the naked eye” because partially obscured print could be seen along the edges of the article, indicating it has been pasted onto the newspaper. The Immigration Judge held that the forged document undercut the credibility of Muyenga’s story as a whole. He explained that in cases where he is not certain of credibility he “generally resolves these issues in favor of the respondents,” but that in this case, the forged document dispelled any doubts as to Muyenga’s lack of credibility. The BIA adopted the Immigration Judge’s reasoning and affirmed the decision.

We review adverse credibility determinations under the deferential substantial evidence standard. *Singh v. Ashcroft*, 367 F.3d 1139, 1143 (9th Cir. 2004). We find that there was substantial evidence to support the Immigration Judge’s decision that Muyenga was not credible, and we cannot say that any reasonable adjudicator would be compelled to find otherwise. *See Desta v. Ashcroft*, 365 F.3d 741, 745 (9th Cir. 2004).

This case is readily distinguishable from *Yeimane-Berhe v. Ashcroft*, 393 F.3d 907, 913 (9th Cir. 2004). In both cases, the petitioner submitted a forged document that went to the heart of the asylum case. *See Akinmade v. INS*, 196 F.3d 951, 955-56 (9th Cir. 1999) (distinguishing forgeries “incidental” to an asylum claim from those that go to the “heart” of the claim, and noting that only the latter

are relevant to credibility). In both, petitioners also presented additional documentation and one credible witness, and in neither case did the Immigration Judge find that the petitioner participated in the forgery. In this case, however, the evidence aside from the forged document does little to enhance petitioner's credibility. While "Yeimane-Berhe's testimony was detailed, internally consistent, and consistent with the testimony of her sister and the documents she submitted into evidence," *Yeimane-Berhe*, 393 F.3d at 913, Muyenga's was "somewhat halting," "not so inherently credible or consistent as to be certain he is telling the truth," and surprisingly similar to his friend Kigove's story. There were inconsistencies and contradictions in Muyenga's story, while in *Yeimane-Berhe* "nothing else in the record suggest[ed] that she [was] not credible." *Id.* at 911. While the forgery in Muyenga's case was the decisive factor in the adverse credibility ruling, it was not the only evidence that suggested he was not credible. The Immigration Judge noted that the newspaper article was "the one piece of evidence that would make [Muyenga's] story completely unassailable," indicating that the other evidence as a whole was not strong enough to outweigh the forged document in his credibility determination.

Muyenga's only witness, Kigove, did not observe Muyenga's alleged capture and mistreatment, unlike Yeimane-Berhe's witness, who brought Yeimane-

Berhe medicine while she was in prison and observed that government officials “were looking for her” when she left Ethiopia. *Id.* at 909 n.3. The Immigration Judge questioned the value of Kigove’s testimony, noting that the two men’s accounts were strangely similar, suggesting that they had “decided to make up a story and stick to it.”

In addition to the forged document, Yeimane-Berhe provided additional documentation that established both past persecution and a well-founded fear of future persecution. She submitted an Ethiopian court document explaining that she had been released from prison in order to receive medical care, had subsequently failed to appear, and had forfeited bail. The court then ordered her arrest. *Id.* at 909. In contrast, the letter Muyenga provided from the Uganda Young Democrats merely described his disappearance and speculated about its cause. The letter was dated more than a year after his disappearance and postdated his arrival in the United States by nearly eleven months. The document does not establish either past persecution or fear of future persecution, because the disappearance it describes could have been Muyenga’s recent immigration to this country. An asylum applicant need not present corroborating evidence, but “if the trier of fact either does not believe the applicant or does not know what to believe, the

applicant's failure to corroborate his testimony can be fatal to his asylum application.” *Sidhu v. INS*, 220 F.3d 1085, 1090 (9th Cir. 2000).

Perhaps the most troubling flaw in Muyenga’s case, however, goes to the forgery itself. Muyenga gives inexplicably contradictory accounts of how he acquired the article. In his August 11, 2000 testimony before the Immigration Judge, Muyenga reported that a woman named Grace knocked on his door and gave him the article, explaining that it was from Muyenga’s uncle. Muyenga later called his uncle, who confirmed the story. Yet in his June 19, 2001 testimony, Muyenga said that he found the article at home with his roommate, who told him that a woman had dropped it off while he was away. When he called his uncle to ask about the article, he was told his uncle had died. This strange inconsistency in Muyenga’s testimony suggests that his description of its origins is not credible. The contradiction alone provides substantial evidence to support the Immigration Judge’s adverse credibility ruling and denial of the petition for asylum. Because the forgery is accompanied by testimonial inconsistencies, this case is more like *Desta v. Ashcroft* than *Yeimane-Berhe*. In *Desta*, we upheld the Immigration Judge’s adverse credibility ruling where documents submitted by petitioner “may have been fraudulent,” because Desta’s testimony contained material inconsistencies that further compromised his credibility. 365 F.3d at 745; *see also*

Chebchoub v. INS, 257 F.3d 1038, 1043 (9th Cir. 2001) (noting that “only one inconsistency can be sufficient” to affirm an adverse credibility ruling).

Accordingly, the petition is DENIED.